

# **EM Consolidated Business Center**

## **Reasonable Accommodation Procedure Guidance**

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## **I. EMCBC Policy and Information on Reasonable Accommodations**

Pursuant to Executive Order 13164, the EMCBC is charged with establishing written procedures for the facilitation of reasonable accommodations. This procedure guidance provides requirements and responsibilities and outlines the criteria and methods for processing requests for the EMCBC Reasonable Accommodation Program.

E.O. 13164 intends to help implement the requirement of the Rehabilitation Act of 1973 (29 United States Code § 791), which requires agencies to provide reasonable accommodation to qualified employees and applicants with disabilities. According to guidance issued by the Equal Employment Opportunity Commission (EEOC), reasonable accommodation procedures should be designed to expand employment opportunities for people with disabilities, not to create new bureaucratic requirements.

The Rehabilitation Act of 1973, which was modified by the Americans with Disabilities Act of 1990, requires federal agencies to accommodate applicants and employees who are qualified individuals with disabilities, unless to do so would impose an undue hardship on the operation of its programs or pose a direct threat to the safety of the employee or others. A Reasonable Accommodation ensures equal employment opportunity and enables qualified individuals with disabilities to perform the essential functions of their position. Many disabled individuals are able to perform their jobs without accommodation; however, there may be barriers in the workplace that prevent others from performing tasks that they could otherwise do with accommodation.

The ADA Amendments Act was signed into law on Sept. 25, 2008, and became effective on Jan. 1, 2009. Through these amendments, Congress rejected a number of U.S. Supreme Court decisions that it viewed as improperly narrowing ADA coverage in a manner that excluded individuals who were meant to fall within the protections of the act. The amendments significantly impact how "individual with a disability" is interpreted.

The ADA's definition of disability remained the same: A disability, with regard to an individual, is: 1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; 2) A record of such an impairment, or 3) Being regarded as having such an impairment. 42 USC 12102 (1). However, the interpretation of the definition of disability will be read more broadly under the ADA Amendments Act.

These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how essential or marginal functions are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.

There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include: making existing facilities accessible, job restructuring, part-time or modified work schedules, acquiring or modifying equipment, changing tests, training materials, or policies, providing qualified readers or interpreters; and reassignment to a vacant position that the employee meets qualification standards of.

It is the policy of the EMCBC to provide equality of opportunity for all persons and to prohibit discrimination in all employment related decisions, therefore, the EMCBC shall provide reasonable accommodations to qualified employees and applicants with disabilities, unless to do so would cause an undue hardship or pose a direct threat to the safety of the employee and/or others.

This guidance document applies to all full and part-time Federal employees as well as those employees with modified work schedules assigned to the EMCBC, located in Cincinnati, OH, including EMCBC employees who are duty stationed at various other sites, to include the EM Small Site employees. These procedures apply only to employees and applicants who have a disability as defined in section II of this document. The EMCBC Customer Sites may elect to adopt the procedure.

## **II. Definitions of Key Terms**

Americans with Disabilities Act (ADA) of 1990 (as amended) – The first comprehensive civil rights law for individuals with disabilities.

Disability – A person has a disability, for purposes of the Rehabilitation Act, if he/she has a physical or mental impairment that substantially limits a major life activity, has a record of such impairment, or is regarded as having such an impairment. An impairment is substantially limiting if it prohibits or significantly restricts an individual's ability to perform a major life activity as compared to the ability of the average person in the general population to perform the same activity. Not all medical conditions are "substantially limiting" because the condition will heal itself within a reasonable time. Similarly, a normal pregnancy is not "substantially limiting" for purposes of the ADA, and therefore does not constitute a disability.

Essential Functions – The essential functions of a position are those functions that define the job. In other words, the job exists to perform those tasks. The essential functions of a job are not the marginal or infrequently performed tasks that could be eliminated without altering the fundamental nature of the job.

Reasonable Accommodation – In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an

individual with a disability to enjoy equal employment opportunities. According to the Equal Employment Opportunity Commission (EEOC), the term “reasonable” has no independent definition. To be reasonable, the accommodation must be effective.

**Interactive Discussion(s)** – A discussion(s) between the decision maker and the individual requesting the accommodation where the specific limitation, problem or barrier is unclear; where an effective accommodation is not obvious; where the parties are choosing between different possible reasonable accommodations; or to obtain any relevant information as it pertains to a request for accommodation.

**Major Life Activity(ies)** – Once an individual establishes that he/she has a disability, he/she must be able to establish that the disability substantially limits one or more of his/her major life activities. Major life activities include such obvious characteristics as hearing, seeing, walking, speaking, breathing, caring for oneself, performing manual tasks, and working. Generally, a major life activity is something of fundamental significance within the meaning of the Rehabilitation Act and not simply an activity important to a particular individual.

**Impairment-** Physical or mental impairment means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine or any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

**Qualified Individual with a Disability** – An individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

**Reasonable Accommodation Coordinator (RAC)** – The individual designated to oversee the activity’s reasonable accommodation process. The individual or office has developed expertise in the requirements of the Rehabilitation Act, potential accommodations, and available resources, and is a resource for individuals with disabilities and activity decision makers.

**Rehabilitation Act of 1973 (as amended)** – A law that requires agencies to provide reasonable accommodation to qualified employees and applicants with disabilities.

**Request for Reconsideration** – An internal, informal dispute resolution process through which an individual can request reconsideration of an activity’s denial of a request for reasonable accommodation, regardless of whether the person has initiated the discrimination complaint process.

**Substantially Limits** - An impairment substantially limits a major life activity if that impairment renders the individual either unable to perform a major life activity or significantly restricts his/her performance of that activity as compared to the average person's performance of the activity. An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment in and of itself.

**Undue Hardship** – The only statutory limitation on an employer's obligation to provide reasonable accommodation is that no such change or modification is required if it would cause "undue hardship" to the employer. "Undue hardship" means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. "Undue hardship" refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business. Undue Hardships are determined on a case by case basis.

**Requestor** – An employee, their representative, or applicant seeking a modification or adjustment to a job application process, essential functions of the job, and/or to enjoy equal benefits and privileges of employment.

**Informal interactive process** – Written or verbal communications between the requestor and Supervisor.

### **III. Responsibilities**

**Requestor:**

- An employee, his or her representative, or applicants for employment are responsible making an oral or written request for reasonable accommodation to their immediate supervisor, the RAC, Equal Employment Officer (EEO), OHR employment representative, or Disability Program Manager.
- Must be a qualified individual with a disability as defined in Section II.
- Ensures that appropriate medical information related to the functional impairment is provided to the RAC and/or the Supervisor.

**EMCBC Director:**

- Delegates authority in writing, to the Supervisors to ensure timely processing of requests for reasonable accommodation.
- Reconsiders the Supervisors denial of a request for reasonable accommodation.
- Ensures the designation of a Reasonable Accommodation Coordinator (RAC), who has a sufficient level of training and expertise on reasonable accommodation.

#### EMCBC Supervisors:

- Approve or deny Reasonable Accommodation Requests
- Ensure compliance with equal employment opportunity laws and regulations.
- Notify and coordinate all reasonable accommodation requests with the RAC.
- Maintains integrity in safeguarding employee records.

#### EMCBC Office of Human Resources (OHR):

- Collaborates with the RAC when necessary to ensure reasonable accommodation requests are processed in an efficient and consistent manner.
- Collaborates with OCRD to ensure Reasonable Accommodation Procedure is consistent with equal employment opportunity.

#### EMCBC Office of Civil Rights and Diversity (OCRD):

- Serves as the advisor to the EMCBC Director, Supervisors, and the OHR for compliance issues regarding reasonable accommodations.
- Provides guidance, assistance, and relevant training on the processing of reasonable accommodation requests to the Supervisors as needed.
- Assesses and monitors the quality, timeliness, and activities of reasonable accommodation requests with the RAC on an annual basis.

#### Reasonable Accommodation Coordinator (RAC):

- Coordinates all reasonable accommodation requests.
- Coordinates with appropriate personnel that can provide recommendations to the Supervisors on a request for reasonable accommodation.
- Ensures the Supervisor engages in on-going, informal interactive discussion(s) with the individual seeking an accommodation.
- Develops and updates the appropriate tracking and monitoring system for reasonable accommodation requests further detailed in Section XII.
- Maintains all reasonable accommodation case files in a secure manner.
- Maintain and Safeguards the confidentiality of medical information. Access to this information will be granted on a strictly limited need to know basis.
- Serves as a liaison with the Resources listed in the appendices section of this document for the supervisor, and/or requestor.
- Works with outside vendors if necessary to facilitate needed assessments, equipment, etc.

#### Office of Technical Support and Asset Management (OTSAM):

- Coordinates with the RAC when reasonable accommodations involve real property such as structural building changes or modifications, modifications to office fixtures, office furniture, including, but not limited to, desk modifications

or accommodations requiring medically necessary chairs. The OTSAM also provides ergonomics equipment for preventative measures.

Office of Information Resource Management (OIRM):

- Coordinates with the RAC when a request involves reasonable accommodations regarding assistive technology, computer equipment, or other related technologies.

Office of Financial Management (OFM):

- Establishes a centralized fund for all Reasonable Accommodations unless the accommodation is funded by the DOD CAP program.
- Coordinates with the RAC when necessary for budgeting purposes and to ensure reasonable accommodation requests are processed in an efficient and consistent manner.
- Collaborates with OCRD to ensure equal employment opportunity.

#### **IV. Requesting an Accommodation**

Initiating the request

Reasonable accommodations are considered for all qualified applicants for employment or EMCBC employees with disabilities, whether they are full-time, part-time, or probationary. An employee or his/her representative must inform his/her Supervisor, RAC, EEO officer, or Disability Program manager, that an adjustment or change at work is needed to accommodate a disability. This request may be made in writing or orally. Any mode of communication may be used to initiate the request. The Supervisor must acknowledge a reasonable accommodation request within five (5) business days and recommend that the requestor fill out an electronic Request for Accommodation form located in the CBC Services intranet page if the form has not already been completed by the employee. A copy of the request should be emailed to the employee's supervisor, along with a copy to the employee, and the RAC.

If a Request for Accommodation is made by an applicant for employment with the EMCBC or its Customer Sites, they may request a reasonable accommodation by contacting the HR Specialist listed within the vacancy announcement. The HR representative must then notify the RAC of the applicant's request.

A family member, friend, health professional or other representative may request a reasonable accommodation on behalf of an individual with a disability. An example of such a request occurs when a family member telephones an employee's supervisor to inform him or her of a medical emergency necessitating hospitalization and time off from work. A supervisor should verify with the

employee, at the earliest possible date, the employee's desire for reasonable accommodation. Regarding time and attendance, employees should consult with the OHR for guidance on the applicable procedures.

An applicant or employee may request reasonable accommodation at any time during the application process or during the period of employment. An individual is not required to use the phrase "reasonable accommodation" when making a request, nor is there a requirement to reference the Rehabilitation Act.

An employee may make a reasonable accommodation request for a training course to the Training Coordinator in OHR within sufficient time of the course. The OHR Training Coordinator will then notify the RAC of the request to provide the accommodation or for further guidance.

## **V. Processing Requests for Accommodation**

An individual's oral or written request starts the reasonable accommodation process. Thereafter, the Supervisor shall engage in the informal interactive process (an informal process to clarify and determine the employee's needs and appropriate remedy). An employee may be asked relevant questions pertaining to the disability and the type of reasonable accommodation needed. During the accommodation process, the supervisor will coordinate with the RAC for further guidance on how to obtain the accommodation if necessary, if a specific accommodation is unknown, and when the accommodation has been made. If a request is made through the Client Assistance Program (CAP), the RAC will serve as the local Point of Contact, and he/she along with the supervisor will be notified of the request by e-mail.

Questions concerning the nature of the disability and the individual's functional limitations may need to be asked in order to identify an effective accommodation. The employee does not need to specify the precise accommodation needed, but does need to describe the problems he or she is experiencing as a result of workplace barriers. The Supervisor should take into consideration the employee's assessment of the effectiveness of an accommodation.

In other circumstances, the interactive process may require that the Supervisor and the employee consult and work with a number of people, including medical and safety personnel. Additional guidance for the interactive process of reasonable accommodation between the Supervisor and employee can be found in Attachment A of this document. The Supervisor and employee should consult with the RAC.

The employee or applicant can be required to provide appropriate medical information related to the disability at issue where the disability and/or the need for accommodation is not obvious and the individual has made known his or her request for accommodation. The Supervisor may inquire about the individual's functional limitations in order to identify an effective accommodation. Supervisors and authorized officials may not ask for documentation that is unrelated to



determining the existence of a disability and the necessity for an accommodation. Accordingly, in most cases, the employee may not be asked to provide his or her complete medical record, which will likely contain information unrelated to the disability at issue.

The ADA prohibits employers from making disability related inquiries and requests for medical examinations prior to offering employment to the applicant. After an applicant has been given a conditional job offer, the EMCBC may make inquiries, as long as it does so for all entering employees in the same job category. After employment begins, disability related inquiries may be made only if they are job related and consistent with business necessity.

Certain types of requests may be resolved by the Supervisor, and others may only be coordinated through the OHR for action. Any Supervisor is authorized to evaluate and approve a request for reasonable accommodation, absent undue hardship to the operation of the office, or any of the exceptions mentioned below.

The employee's Supervisor is authorized to approve or deny requests for the following:

- 1) Leave requests and tour of duty
- 2) Rehabilitation adaptive equipment
- 3) Specially designed furniture
- 4) Adaptive and Information technology
- 5) Communications equipment
- 6) Materials in alternative formats, such as braille and large print
- 7) Temporary reader
- 8) Personal assistant
- 9) As-needed sign language interpreter services
- 10) Other staff assistant services when current staff are unable to accommodate

In certain instances, authorized personnel will be required to consult with one another in order to facilitate the accommodation. Such offices include but are not limited to, the OTSAM, the OFM, the OIRM, the General Services Administration, or the landlords of leased facilities.

## **VI. Time Limitations**

The Supervisor must acknowledge a reasonable accommodation request within five (5) business days, and absent extenuating circumstances, or expedited processing, a reasonable accommodation must be provided or the request must be denied by the authorized official on or before the 30<sup>th</sup> business day from the date the request is made.

Requests must be processed in a manner that imposes the fewest burdens on individuals requesting accommodation, and in the most expeditious manner

possible. Therefore, a decision on the request should be made at the lowest possible supervisory level allowed by these procedures.

When a request for a simple accommodation is made, it should be processed immediately. An example of such a request is a request by a diabetic employee to take bathroom or snack breaks to accommodate a medical condition. This accommodation can be granted immediately by a supervisor.

### **Exceptions to 30 day time limit.**

(a) Expedited processing. Expedited processing may be required when a reasonable accommodation is needed to enable a person to apply for employment with the EMCBC or when an activity is scheduled to occur within a short time.

(b) Extenuating circumstances. Extenuating circumstances are factors that could not have been reasonably anticipated or avoided in advance of the request for the reasonable accommodation. A delay in forwarding medical documentation by a health professional to the employee's supervisor is an example of an extenuating circumstance, as is a delay in the shipment of specially ordered equipment needed to grant a reasonable accommodation. While awaiting requested documentation or information from the requester or his/her health care provider, or shipment of specially ordered equipment, the 30 day time limit is frozen while waiting and the clock will restart when the items are received.

The Supervisor must notify the individual seeking reasonable accommodation of any reason for delay in the consideration of the accommodation or in the provision of the accommodation, and must consider taking temporary measures to assist the person needing accommodation, if possible. When possible, the supervisor should advise the individual when the accommodation request can reasonably be expected to be processed.

The time to process a request for reasonable accommodation may not be extended beyond the 30 day time limit merely because a written request by the employee has not been received.

## **VII. Confidentiality Requirements and Requesting Medical Information**

If an employee requests a reasonable accommodation, he/she must provide their Supervisor with appropriate medical documentation that relates to his or her impairment, where the disability or the employee's need for accommodation is not visible or otherwise obvious. Likewise, the Supervisor may not request medical documentation when the disability or need for accommodation is obvious. Such an obvious disability could be impaired vision, or an inability to walk or speak. Examples of disabilities that are not obvious are: mental illness, learning disabilities, epilepsy, cancer, arthritis, and/or asthma.

The Supervisor may request additional medical documentation from the employee if the documentation submitted by the employee does not clearly explain the nature of the disability, the need for reasonable accommodation, or if needed, to clarify how the requested accommodation will assist the employee in the performance of essential function of the job. The Supervisor is not entitled to access the employee's entire medical record. Only medical records related to the disability and the need for accommodation may be requested.

The Supervisor shall require, in a case of a disability that is not obvious, that the employee submit documentation that describes: the nature, severity and duration of the individual's impairment; the activity or activities that the impairment limits, the extent of the limitations on the employee's ability to perform them; and substantiates why the accommodation requested is needed. Guidance for requesting medical documentation can be found in Attachment B.

In addition to the required documentation, the employee can be required to provide, in the form of a statement, information regarding his or her disability and the need for reasonable accommodation. The Supervisor may also pose questions to the employee that is intended to elicit information about the disability. However, matters unrelated to the disability at issue are not permissible. Employees are required to provide documentation about the disability and the functional limitations from an appropriate health care or rehabilitation professional. Appropriate professionals include, but are not limited to, doctors, psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists and licensed mental health professionals. The employee may be asked to sign a limited release allowing the EMCBC to submit a list of specific questions to the health care professional. If an individual's disability or need for accommodation is not obvious, and he or she refuses to provide the requested reasonable documentation, then the individual's request for a reasonable accommodation may be denied.

Where the EMCBC is entitled to request medical information under the standards set forth above, the EMCBC is entitled to have that documentation reviewed by its own medical expert at its own expense.

Documentation will be deemed insufficient if; it does not specify the existence of a disability and explain the need for reasonable accommodation, the health care professional does not have the expertise to give an opinion about the individual's medical condition and the limitations imposed by it, the information does not specify the functional limitations due to the disability; or other factors indicate that the information provided is not credible or is fraudulent.

Medical documentation obtained in connection with the reasonable accommodation process must be kept confidential, regardless of the origin of that information. All medical information received by the EMCBC must be maintained in a file separate and apart from the individual's electronic official personnel file (eOPF). All records are to be maintained in accordance with the Privacy Act and the

requirements of 29 C.F.R. 1611. The RAC will maintain custody of all records created or obtained during the processing of a reasonable accommodation request, including medical records.

The contents of the medical file may only be disclosed as follows:

- 1) The Supervisor, who has a need to know, may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodations;
- 2) First aid and safety personnel may be told if the disability might require emergency treatment;
- 3) Government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
- 4) EEO officials may be given information necessary for maintaining records and evaluations of the EMCBC performance regarding accommodation requests; and
- 5) In certain circumstances Workmen's Compensation offices or insurance carriers may be provided with medical information. See 29 C.F.R. 1630.14 (b), and 1630.16 (f).

If medical information is disclosed in any of the circumstances above, the EMCBC must inform the persons receiving the information of the requirement of confidentiality. Additional guidance for requesting medical documentation can be found in Attachment B of this document.

#### **VIII. Granting Reasonable Accommodation Requests**

The EMCBC may provide any form of reasonable accommodation which is effective. Alternative suggestions for reasonable accommodation should be discussed with the requestor; however, the EMCBC is not required to provide the specific accommodation requested. While due consideration should be given to the preference of the requestor, the EMCBC may select a less expensive or less burdensome accommodation, and is not required to demonstrate that it is an undue hardship to provide the specific accommodation requested.

If a reasonable accommodation is selected that differs from the requested accommodation, then the Supervisor shall advise the requestor why the selected accommodation is effective.

Once the request for reasonable accommodation has been approved, the requestor shall be immediately notified of the decision. Notification of the decision to grant the accommodation may be made by the Supervisor. The decision to grant the accommodation will be transmitted orally and in writing to the requestor and to the RAC for documentation purposes.

#### **IX. Denial of Reasonable Accommodation Requests**

If the Supervisor denies a request for reasonable accommodation, then the requestor must be notified in writing of the denial by completing the Reasonable Accommodation Denial form and the reasons for the denial within the time limits prescribed in Section VI of this document. The notification of denial must also identify the name and office of the decision maker. In the case of denial of a request for reasonable accommodation, the notification must be made by the immediate supervisor. A copy of the denial for accommodation shall be submitted to the RAC for record purposes. The written notification of denial must advise the individual of his or her right to file a discrimination complaint in the EMCBC's Equal Employment Opportunity, and/or the ADR process. The notice should also advise the individual that he or she may have rights under the Merit Systems Protection Board and/or grievance procedures.

The applicant or employee may file a written request for further reconsideration within ten (10) business days of the written denial with the EMCBC Director, or Deputy Director. The applicants or employees reconsideration request should include any additional information or supporting documentation not originally considered by the decision maker. The EMCBC Director or Deputy Director shall consider the request and respond, in writing, within ten (10) business days of the request for reconsideration. The time limit may be extended in extenuating circumstances.

## **X. Other Considerations**

*Reassignment:* Reassignment will be considered as a form of reasonable accommodation only if the EMCBC Director determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. Reassignment will be considered a last resort absent undue hardship, if the employee can no longer perform the essential functions of the position he or she holds without the accommodation. The following conditions must exist in order to provide reassignment as a reasonable accommodation:

- 1) The individual must be an employee of EMCBC or its Customer Sites;
- 2) The employee can no longer perform the essential functions of his or her job because of a disability;
- 3) No other effective accommodation would enable the employee to perform the essential functions of his or her current job; or, all other possible accommodations would impose an undue hardship;
- 4) The reassignment may be made only to a pre-existing, funded position which is vacant; and
- 5) The full performance level of the reassigned position may not be higher than the full performance level of the position currently held.

The EMCBC is not required to create or fund a position, nor is it required to reassign an individual from an existing position in order to create a vacancy for the employee being accommodated. Furthermore, the employee being accommodated must meet the Office of Personnel Management Qualification Standards in order to be qualified for the new position. The employee is considered qualified for the new position if he or she possesses the requisite skill, experience, education and other job-related requirements of the position, and can perform the essential functions of the position with or without reasonable accommodation. If all the conditions are met for reassignment, the employee will not be required to compete for the position.

When reassignment is sought as a reasonable accommodation, the matter shall be referred to the OHR, whereas that office shall:

- 1) Search and identify vacant positions within the EMCBC or if necessary, DOE wide for which the employee may be qualified, with or without reasonable accommodation;
- 2) Identify positions likely to be vacant over a sixty (60) day period for which the employee may be qualified; and
- 3) Consider vacant, lower-level positions for which the individual may be qualified, if unable to identify vacant positions equivalent in grade, position, pay and status of the employee's current position.

*Undue Hardship:* The law does not require the EMCBC to provide any and every accommodation an applicant or employee requests. The EMCBC is only required to provide those accommodations that would allow the individual to perform the essential functions of the job, and which would not impose an undue hardship on the EMCBC. However, if a decision denying a reasonable accommodation is based on a claim of undue hardship, the EMCBC must demonstrate that the accommodation would cause significant difficulty or expense. Where there is a denial based upon undue hardship the Supervisor shall seek advice from the OHR, OCC, and the OCRD.

A determination of undue hardship should be based on several factors, including but not limited to:

- 1) The nature and cost of the accommodation needed;
- 2) The overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
- 3) The overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- 4) The type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the

- administrative or fiscal relationship of the facility involved in making the accommodation to the employer;
- 5) The impact of the accommodation on the operation of the facility.

If the EMCBC determines that the requested accommodation will cause undue hardship, but that another reasonable accommodation will be effective and will not cause undue hardship, then the EMCBC shall provide the other reasonable accommodation.

## **XI. Employee Rights**

*Alternative Dispute Resolution:* The EMCBC encourages individuals who have been denied requests for reasonable accommodation to use the EMCBC's Alternative Dispute Resolution (ADR) process. Participation in the ADR process is strictly voluntary.

*Equal Employment Opportunity (EEO) complaint:* An individual who has been denied a reasonable accommodation may choose to file an Equal Employment Opportunity (EEO) complaint of discrimination alleging a violation of Section 601 of the Rehabilitation Act. To initiate an EEO complaint, the individual must contact the OCRD or an EEO Counselor within 45 days of the date of the discriminatory act (denial of the request for accommodation), or within 45 days of when the individual became aware or should have become aware of the alleged discriminatory act. If a complaint is filed, the EMCBC will conduct EEO counseling, or the parties may engage in the ADR process.

*Administrative Grievance:* The Administrative Grievance process provides another process for dispute resolution in order to encourage mediation. This is only for current employees, and not for applicants. In accordance with DOE O 342.1, an informal grievance is required prior to submitting a formal grievance.

## **XII. Information Tracking**

The EMCBC shall maintain a system for tracking the processing of requests for reasonable accommodation. The RAC shall have primary responsibility for maintaining this database. The tracking system will be used to evaluate the EMCBC'S performance in responding to requests for reasonable accommodation. The database shall track the following information:

- 1) The number and types of reasonable accommodations that have been requested, and whether the requests have been granted or denied;
- 2) The occupational series, grade level, and agency component of those persons requesting accommodation.
- 3) For each of the occupational series, the types of reasonable accommodation requested;

- 4) By departmental component and job category, the number and types of reasonable accommodation requested.
- 5) By departmental component and job category, the number and types of reasonable accommodation that have been granted or denied;
- 6) The number and types of reasonable accommodations that related to the benefits and privileges of employment, and whether those requests have been granted or denied;
- 7) The reasons for denial of requests for reasonable accommodation;
- 8) The amount of time taken to process each request for reasonable accommodation; and
- 9) The sources of technical assistance or organizations that have been consulted when identifying possible reasonable accommodations.

### **XIII. Record Keeping and Reporting**

*Record Keeping:* The RAC shall maintain tracking information on reasonable accommodation requests for a period of not less than 3 years.

Records of individuals requesting reasonable accommodation shall be maintained for the duration of the person's employment with the EMCBC. Records shall include any documentation of the individual's disability and need for accommodation, as well as information regarding the disposition of the request.

The EEOC has the right to review all relevant records, including records of individual employees requesting reasonable accommodation, in order to evaluate the efficacy of the EMCBC's reasonable accommodation procedures.

*Reporting:* Executive Order 13164 requires that the foregoing procedures for reasonable accommodation adopted by the EMCBC be submitted to the Director of the EEOC, Federal Sector Programs.



**GUIDANCE FOR THE INTERACTIVE PROCESS BETWEEN THE  
SUPERVISOR AND EMPLOYEE**

Information obtained during interactive discussions will assist the Supervisor in making the determination whether the employee is a qualified individual with a disability. Interactive discussions may also be useful in determining if additional medical documentation is necessary, obtaining information about the essential functions of the position and how they can be performed, the appropriate accommodation if the employee is found to be a qualified individual with a disability, and/or the parameters of a job search (if applicable), etc.

The interactive discussion(s) between the Supervisor and the employee should be used to obtain the following information in order to assess the disability claim: (NOTE: The interactive process is usually between the Supervisor and the employee. However, under certain circumstances, another other agency official may engage in the interactive process with the employee.)

1) Does the person claim that they have a present physical or mental impairment?

If so, what is the impairment? The requesting employee could be asked to describe the impairment in some detail, if it is not otherwise obvious (i.e., the individual is blind or deaf or uses a wheelchair etc.)

2) Does the impairment substantially limit a major life activity?

The employee should be asked to describe the limitation(s) they have. If the individual's impairment substantially limits a major life activity, the person could be asked to describe the limitation(s) in some detail. If the individual establishes he/she has a present physical or mental impairment that substantially limits a major life activity, they establish that they have a disability as that term is defined under the Rehabilitation Act. If they are unable to establish that they have a disability, there is no obligation under the Rehabilitation Act to provide an accommodation.

3. Is the person "qualified?"

If the individual establishes that he/she has a disability, it must then be determined whether he/she:

- (1) satisfies the requisite skill, experience, education and other job related requirements of the job, (see the Office of Personnel Management qualification standards for that position); and
- (2) Can perform the "essential functions of the job", with a reasonable accommodation or without a reasonable accommodation.

Involve the employee by asking questions such as:

- i. At the present time, the essential functions are performed in this manner. Can you tell us how you can achieve the same results using a different method?
- ii. This equipment is used on a regular basis in this manner. Can you describe how you would use it in a different manner to complete required tasks?
- iii. Historically, this job has been done using this sequence and method. Do you feel you could accomplish the same results in this or in another way within your limitations?
- iv. This is the normal arrangement of the work area. Do you have any suggestions regarding changes or modifications that may be necessary to enable you to perform the job?

Remember that in making a determination as to whether or not the individual is “qualified”, he/she must meet these two criteria as they relate to either their present job or the job they are seeking (either as an applicant or through the accommodation of last resort; reassignment.)

4. What accommodation has the employee requested?

Determine from the employee or applicant what he/she thinks is needed to enable them to perform the job. While ensuring privacy of the requestor, you may need to consult with the RAC, to determine whether the employee’s proposed Reasonable Accommodation is feasible and whether other Reasonable Accommodations can be made. Consider the individual’s preferences and the effectiveness of each accommodation and its cost. Select the most appropriate for both management and the individual. The chosen Reasonable Accommodation need not be the best or most expensive or even the one preferred by the individual. The Reasonable Accommodation must, however, be reasonable and enable the individual to perform the essential functions of his or her position. The employer makes the ultimate decision.

## **GUIDANCE FOR REQUESTING MEDICAL DOCUMENTATION**

When a disability and/or need for accommodation is not obvious or otherwise already known, reasonable documentation may be required to support the existence of a disability and the need for the accommodation requested. This documentation must come from an appropriate medical professional to explain the nature of the disability and the need for reasonable accommodation, or to clarify how the requested accommodation will assist the employee to perform the essential functions of the job. The Supervisor must consider medical information that the employee's physician(s) may provide to determine job-related limitations and how they could be overcome.

Under certain circumstances, the following information must be provided, in writing, by the employee's first level supervisor to the employee's health professional to assist him/her in providing the required medical documentation:

1. Description of the nature of the job.
2. Description of the essential functions the job.
3. Any other information that is relevant to evaluating the request for accommodation.

The Employee Relations and Benefits Team or Staffing Team of the Office of Human Resources can be consulted in preparing information concerning the nature of the work, essential functions of the job, etc. if necessary.

If the information provided by the employee's health professional is not sufficient to substantiate that the individual has a disability and/or needs the reasonable accommodation requested, supplemental medical information may be required including if appropriate, examination by a medical specialist of the EMCBC's choosing and expense.

*Medical information obtained in connection with the reasonable accommodation process must be kept confidential. Mishandling of information relating to an individual's disability or medical condition may constitute a violation of the Privacy Act and/or the Rehabilitation Act for which the EMCBC may be liable for damages. Supervisors and managers who have a need to know the information to perform their responsibilities may be told about the necessary medical restrictions or the need for accommodations, but medical information should be disclosed only when necessary.*

## REASONABLE ACCOMMODATION RESOURCES

### 1. U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

The EEOC's publication center has free documents that can be obtained on request or from the internet site at <http://www.eeoc.gov> .

The three main sources of interpretive information are:

- (1) The Interpretive Guidance accompanying the Title I regulations (also known as the Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9;
- (2) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, (revised October 17, 2002); and
- (3) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992) (Technical Assistance Manual). The Technical Assistance Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents:

- (1) Enforcement Guidance: Pre employment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995);
- (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996);
- (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997);
- (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and
- (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 2000).

All of the above-listed documents, with the exception of the Technical Assistance Manual and the poster, are also available through the Internet at [www.eeoc.gov](http://www.eeoc.gov). All of these documents provide guidance that applies to federal agencies through the Rehabilitation Act of 1973, 29 U.S.C. § 791.

### 2. JOB ACCOMMODATION NETWORK (JAN)

JAN is a free consulting service of the Office of Disability Employment Policy, U.S. Department of Labor, designed to increase the employability of people with disabilities by: 1) providing

individualized worksite accommodations solutions, 2) providing technical assistance regarding the ADA and other disability related legislation.

<http://askjan.org> (800) 526-7234 (Voice) (877) 781-9403 (TTY)

### **3. COMPUTER/ELECTRONIC ACCOMMODATIONS PROGRAM (CAP)**

CAP provides assistive technology and services to people with disabilities, managers, supervisors, and IT professionals. CAP increases access to information and works to remove barriers to employment opportunities by eliminating the costs of assistive technology and accommodation solutions. CAP buys it, pays for it, and gets it to the users.

<http://www.cap.mil>

5111 Leesburg Pike, Suite 810 Falls Church, VA 22041 (703) 681-8813 (Voice) (703) 681-3978 (TTY) (703) 681-9075 (Fax) [cap@tma.osd.mil](mailto:cap@tma.osd.mil) (E-Mail)

### **4. ADA DISABILITY AND BUSINESS TECHNICAL ASSISTANCE CENTERS (DBTACs)**

Ten federally funded regional centers provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

<http://adata.org> (800) 949-4232 (Voice/TT)

### **5. REGISTRY OF INTERPRETERS FOR THE DEAF (RID)**

RID is a national membership organization of professionals who provide sign language interpreting/transliterating services for Deaf and Hard of Hearing persons.

<http://www.rid.org>

Registry of Interpreters for the Deaf, Inc.

333 Commerce Street

Alexandria, VA 22314

(703) 838-0030 (Voice)

(703) 838-0459 (TTY)

(703) 838-0454 (Fax)

### **6. REHABILITATION ENGINEERING AND ASSISTIVE TECHNOLOGY SOCIETY OF NORTH AMERICA (RESNA)**

RESNA is an interdisciplinary association of people with a common interest in technology and disability. Their purpose is to improve the potential of people with disabilities to achieve their goals through the use of technology. To serve that purpose, RESNA promotes research, development, education, advocacy and provision of technology; and by supporting the people engaged in these activities.

<http://www.resna.org>

(703) 524-6686 (Voice)

(703) 524-6639 (TTY)

(703) 524-6630 (Fax)

7. EMCBC Public Transportation Subsidies Policy
8. DOE Voluntary Leave Donation
9. Ergonomics
10. EMCBC Telework Policy

**Additional Information for the Computer/Electronic Accommodations  
Program (CAP)**

In 2002, the Department of Energy signed an interagency agreement with the Department of Defense's (DOD) Computer/Electronic Accommodations Program (CAP) program to provide assistive/adaptive technology free of charge to DOE employees with disabilities. The following information regarding CAP provides information about the CAP application process.

Established by the Federal government, the CAP is a centrally funded program that provides assistive technology and reasonable accommodations to people with disabilities. CAP's mission is to ensure that people with disabilities have equal access to information and employment opportunities in DOD and throughout the Federal government.

The Assistive Technology Act of 1998 defines Assistive or Adaptive Technology as: products, devices, or equipment, whether acquired commercially, modified or customized, that are used to maintain, increase or improve the functional capabilities of individuals with disabilities. CAP provides assistive technology to employees of federal agencies at no cost to the agency. Assistive technology ensures that people with disabilities have equal access to information/electronic and telecommunication work environments. CAP provides objective information about assistive technology products and rehabilitation equipment for people with all types of disabilities, including both apparent physical disabilities as well as hidden cognitive disabilities; blindness/low vision; cognitive; communication; deafness/hard of hearing; and dexterity. Information available through CAP includes all assistive technologies whether acquired commercially, modified, or customized.

The types of adaptive/assistive technology CAP provides are:

- Screen Readers
- Scanners
- Memory Aids
- Braille Displays
- Magnification Software
- Voice Recognition Software
- Augmentation Communications Devices
- Assistive Listening Devices
- Video Communication Devices
- Teletypewriters

Per EEOC guidance, CAP may require medical information in connection with the request for reasonable accommodations. Medical documentation includes the nature, severity, and duration of the disability and describes the extent to which the disability limits performance. Medical documentation is always requested to support repetitive stress injuries. Certain requests do require forms that are available on the website to be filled out.

#### **A. What type of assistive technology does Computer/Electronics Accommodation Program (CAP) offer?**

CAP offers a wide variety of assistive technology for people with hearing, visual, dexterity, cognitive, or communication disabilities. Some of the assistive technology includes: alternative key boards, pointing devices, print enlargers, screen readers, speech recognition software, and teletypewriters.

#### **B. How to Make a Request**

Prior to submitting an accommodation request to CAP, you should determine which assistive technology you will need. If you are unsure or are unfamiliar with assistive technology, there are a few options you should consider:

1. Work with the EMCBC Reasonable Accommodation Coordinator (RAC).
2. Browse some of the most frequently requested [assistive technology](#) on the CAP website;
3. Use the [CAP Online Needs Assessment](#) to answer questions about your job duties and functional limitations. The online needs assessment tool will be able to make recommendations based on your responses;
4. Contact [CAPTEC](#) to schedule an onsite or VTC needs assessment, or with any general questions about your assistive technology; or,
5. Submit an accommodation request on-site needs assessment – CAP will contract a local consultant to visit your workstation to perform a needs assessment.

Once you are ready to submit your accommodation request to CAP, you can do so in one of three ways:

1. Online – complete and submit a [CAP Accommodation Request](#) using our easy to follow, step-by-step online request module;
2. Email – complete a [CAP Accommodation Request form](#) in either .DOC or .PDF format and [email the request to CAP](#); or,
3. Fax – print out and complete a [CAP Accommodation Request form](#) and fax the request to CAP at 703-681-9075.



Certain accommodation requests will require you to provide the CAP staff with required additional information or documentation:

1. Computer Specifications Form – the CAP Speech Form is required for all requests for speech recognition software. Prior to submitting the form to CAP, make sure that the entire form is complete and a member of your HelpDesk or IT Department has signed the form.
2. Video Communication Devices Information Form – the CAP Videophone Additional Information Request Form provides the CAP staff with information about the customer's essential job functions and technical environment to ensure that the correct videophone is received.
3. Personal Assistant Information Form – any request submitted to CAP for a personal assistant must be accompanied by a completed Personal Assistant Information Form.
4. Telework Agreement – customers requesting a laptop computer, printer, fax machine, scanner, or all-in-one machine for their telework location must provide the CAP staff with a copy of their accepted Telework Agreement which states that they are teleworking “as a form of reasonable accommodation.”
5. Medical Documentation\* – any person who submits a CAP Accommodation Request and does not have a targeted disability must provide CAP with supporting medical documentation which cites their disability or disabling condition. There is no timeframe for when the documentation must be from since the disabilities CAP accommodates are considered to be permanent. Medical documentation is kept on-file with CAP for seven years from the date it is received.

Note: \*CAP adheres to HIPAA privacy laws and regulations, and any Personal Identifying Information (PII) on medical documentation that is received is immediately removed. Any documentation that is not needed is destroyed.

### **C. Do I need to submit a note from a physician?**

Sometimes CAP may require “additional information.” Medical documentation may be required to support the need of an accommodation under the Rehabilitation Act.

<div>DOE -EM Consolidated Business Center</div> <div><b>REASONABLE ACCOMMODATION</b></div> <div><b>REQUEST FORM</b></div>	<b>FOR USE BY THE REASONABLE ACCOMODATION COORDINATOR (RAC)</b>
	ACCOMMODATION NUMBER
	DATE RECEIVED

INSTRUCTIONS: Submit Original to Supervisor, Reasonable Accommodation Coordinator, or EEO Official. Retain one copy for your file

1. Name of Requestor		2. Date	
3. Work Phone		4. Check One:    Employee <input type="checkbox"/> Job Applicant <input type="checkbox"/>	
5. Supervisor's Name		6. Title of Supervisor	
		7. Supervisor Phone	

8. Describe the nature of your medical condition and your limitations (including whether the condition and/or limitations are permanent or temporary)

9. Describe any impact of your present limitations on the performance of your duties:

10. Describe the accommodation(s) you believe would assist you in the performance of your duties

11. Is this Request Likely to be repeated?    Y   ☐   N   ☐

Privacy Act Statement: the collection of this information is authorized by 29 USC 791 et seq. This information will be used to process a request for reasonable accommodation. As a routine use, the information may be disclosed to: appropriate agency officials processing or otherwise responding to the request for reasonable accommodation and/or decisions related to such requests; and appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the DOE is a party or has an interest; to a government agency in order to obtain information relevant to DOE decision(s) concerning reasonable accommodation; to a congressional office in order to obtain information relevant to DOE decision(s) concerning reasonable accommodation; to an expert, consultant or other person under contract with the DOE to fulfill an agency function; to an investigator, administrative judge or complaints examiner appointed for the investigation of a formal EEO complaint under 29 CFR 1614; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; to the Office of Personnel Management in making determinations related to disability retirement and benefit entitlement; to officials of the Office of Worker's Compensation Programs; to an employee's private treating physician and to medical personnel retained by the DOE to provide medical services in connection with an employee's health or physical condition related to employment; and to the Occupational Safety and Health officials when needed to perform their duties. Completion of this form is voluntary. If this information is not provided, processing the request for reasonable accommodation may not be possible.

**I certify that the statements and information contained in this document and any attachments are true and complete to the best of my knowledge. I hereby give permission to release any information contained in this request to authorize officials with a need to know.**

\_\_\_\_\_  
Requester's signature

\_\_\_\_\_  
Date

**The signature below acknowledges receipt of this request for accommodation and attachments if any.** 27

<div>DOE -EM Consolidated Business Center</div> <div>DENIAL OF</div> <div>REASONABLE ACCOMMODATION REQUEST FORM</div>		FOR USE BY THE REASONABLE ACCOMODATION COORDINATOR (RAC)
		ACCOMMODATION NUMBER
		DATE RECEIVED
INSTRUCTIONS: Submit Original to Requestor or Applicant, and Copy to Reasonable Accommodation Coordinator. Retain one copy for your file		
1. Name of Requestor		2. Date
3. Work Phone	4. Check One:    Employee <input type="checkbox"/> Job Applicant <input type="checkbox"/>	
5. Supervisor's Name	6. Title of Supervisor	7. Supervisor Phone
<div>8. Detail explanation for the denial of reasonable accommodation. The explanation should provide the reason for denying the request (e.g., person is not a qualified individual with a disability, the accommodation would cause undue hardship, the accommodation would be ineffective or requiring lowering of performance or production standards, etc.) as well as a detailed explanation for why the requestor does not meet the necessary elements for receiving reasonable accommodation (e.g., why the medical documentation provided is inadequate to establish a disability, or how an accommodation would cause undue hardship, etc.)</div>		
<div>9. If the individual proposed one type of reasonable accommodation which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective.</div>		

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10. You have the right to:

- Invoke the Alternative Dispute Resolution (ADR) process;
- Submit a request for reconsideration; or
- File an Administrative grievance; or
- File a EEO discrimination complaint.

For more information, please contact OCRD

\_\_\_\_\_  
Supervisor's signature

\_\_\_\_\_  
Date

DOE -EM Consolidated Business Center

**REASONABLE ACCOMMODATION**

**INFORMATION REPORTING FORM**

**FOR USE BY THE REASONABLE  
ACCOMMODATION COORDINATOR (RAC)**

ACCOMMODATION NUMBER

DATE RECEIVED

INSTRUCTIONS: Submit to the Reasonable Accommodation Coordinator along with any documents obtained. Retain a copy for your file.

1. Name of Requestor

2. Date

3. Work Phone

4. Check One:

Employee

☐

Job Applicant

☐

5. Supervisor's Name

6. Title of Supervisor

7. Supervisor Phone

8. Reasonable Accommodation: ☐ Approved

☐

Denied (If denied, attach copy of the completed Denial of Reasonable Accommodation Form

☐

Denied under Reasonable Accommodation but granted via other provision(s)

9. Date reasonable accommodation requested:

10. Who Received Request:

11. Name of decision-maker:

12. Date reasonable accommodation approved or denied:

13. Date reasonable accommodation expected to be provided (if different from date approved):

14. Were the time frames met? If no, explain why:

15. Reasonable Accommodation Needed For:

☐

Application Process

☐

Performing Essential Job

☐

Attending Training

☐

Attending a Social Event

16. Type(s) of reasonable accommodation requested (e.g., adaptive equipment, staff assistant, removal of architectural barrier):

17. Accommodation Provided:

18. Was medical Information required to process this request?  
Please explain. Why:

19. Comments:

20. Form Completed By:

21. Date: